STATE OF MICHIGAN
IN THE SUPREME COURT

ESTATE OF DANIEL CAMERON, by DIANE CAMERON and JAMES CAMERON, Co-Guardians,

Plaintiffs-Appellants,

v

AUTO CLUB INSURANCE ASSOCIATION,

Defendant-Appellee.
_____/

Supreme Court No. 127018

Court of Appeals No. 248315

Washtenaw County Circuit Court No. 02 549 NF

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DEFENDANT-APPELLEE'S SUPPLEMENTAL BRIEF

ORAL ARGUMENT REQUESTED

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TABLE OF CONTENTS

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INDEX OF AUTHORITIES

CASES **PAGE(S)**

GROSS, NEMETH & SILVERMAN, P.L.C.
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INDEX OF AUTHORITIES cont'd

CASES **PAGE(S)**

GROSS, NEMETH & SILVERMAN, P.L.C.
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INDEX OF AUTHORITIES cont'd

CASES **PAGE(S)**

STATUTES

OTHER AUTHORITIES

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STATEMENT OF QUESTIONS PRESENTED

I. IS THE ONE-YEAR-BACK LIMITATION ON DAMAGES SET FORTH IN MCL 500.3145(1) AFFECTED BY THE MINORITY/INSANITY TOLLING PROVISION OF MCL 600.5851(1)?

The trial court did not address this question.

The Court of Appeals did not address this question.

Plaintiffs-Appellants contend the answer should be, "Yes".

Defendant-Appellee contends the answer should be, "No".

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I. THE "ONE-YEAR-BACK" LIMITATION ON DAMAGES SET FORTH IN MCL 500.3145(1) IS NOT AFFECTED BY THE MINORITY/INSANITY TOLLING PROVISION OF MCL 600.5851(1).

ACIA submits this brief in response to this Court's February 2, 2006, order directing the parties to address whether MCL 600.5851(1) can apply to the "one-year-back" rule of MCL 500.3145(1).

As in their original brief, Plaintiffs advance several arguments which avoid applying the express language of the relevant statutes. In the following discussion, ACIA will present the correct analysis of the issue. In the context thereby provided, ACIA will demonstrate the several legal and logical inadequacies in Plaintiffs' contentions. ACIA will then respond to the recently filed briefs of Amici Curiae MTLA and Michigan Department of Community Health (MDCH).

The Statutory Language

In an apparent attempt to create doubt as to the nature and purpose of the "one-year-back" rule, Plaintiffs attempt to characterize it as a statute of limitations. (Plaintiffs-Appellants' Supplemental Brief on Appeal, p 1-2, 8-9). To that end, Plaintiffs improperly utilize the catch line heading of §3145(1) to construe the statute (id., p 2, 9) in blatant contravention of the express directive of the Legislature:

> "**The catch line heading of any section of the statutes** that follows the act section number **shall in no way** be deemed to be a part of the section or the statute, or **be used to construe the section more broadly or narrowly than the text of the section would indicate**, but

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> shall be deemed to be inserted for purposes of convenience to persons using publications of the statutes."

MCL 8.4b (emphasis added).

In Devillers v ACIA, 473 Mich 562; 702 NW2d 539 (2005), this Court stated: "As we noted in *Welton v Carriers Ins Co*, §3145(1) contains two limitations on the time for filing suit and one limitation on the period for which benefits may be recovered ..." Devillers, supra at 574.

The first temporal limitation requires that an action to recover no-fault benefits be commenced within one year of the accident unless one of two conditions is met:

> "An action for recovery of personal protection insurance benefits payable under this chapter for accidental bodily injury may not be commenced later than 1 year after the date of the accident causing the injury unless written notice of injury as provided herein has been given to the insurer within 1 year after the accident or unless the insurer has previously made a payment of personal protection insurance benefits for the injury."

MCL 500.3145(1). That provision is a qualified statute of repose.

It is a statute of repose because it bars suit after a fixed period of time even if the claimant has not yet incurred any loss:

> "**Statute of repose.** A statute that bars a suit a fixed number of years after a defendant acts in some way (as by designing or manufacturing a product), even if this period ends before the plaintiff has suffered any injury.
>
> "'**A statute of repose** . . . limits the time within which an action may be brought and **is not related to the accrual of any cause of action**; the

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> injury need not have occurred, much less have been discovered. Unlike an ordinary statute of limitations which begins running upon accrual of the claim, **the period contained in a statute of repose begins when a specific event occurs, regardless of whether a cause of action has accrued** or whether any injury has resulted.' 54 CGS *Limitations of Actions* §4 at 20-21 (1987)."

Black's Law Dictionary (7th ed 1999) p 1423 (emphasis added).

> "'"A statute of repose limits the liability of a party by setting a fixed time after . . . which the party will not be held liable for . . . injury or damage . . . . Unlike a statute of limitations, a statute of repose may bar a claim before an injury or damage occurs."' *Frankenmuth Mut Ins Co v Marlette Homes, Inc,* 456 Mich 511, 513 n 3; 573 NW2d 611 (1998) (citation omitted)."

Ostroth v Warren Regency, GP, LLC, 474 Mich 36, 42-43 n 7, 709 NW2d 589 (2006). See also, e.g., Colormatch Exteriors, Inc v Hickey, 275 Ga 249, 569 SE2d 495, 498 (2002); Coslow v General Electric Co, 877 SW2d 611, 612 (Ky 1994).

It is qualified because it is rendered inapplicable upon the occurrence of either of the two conditions set forth in the provision. Its self-evident purpose is to provide the insurer with an opportunity for meaningful investigation into the circumstances of the accident and the nature of the injury thereby caused. See Pendergast v American Fidelity Fire Ins Co, 118 Mich App 838, 841-42, 325 NW2d 602 (1982); Davis v Farmers Ins Group, 86 Mich App 45, 47-48, 272 NW2d 334 (1978).

The second temporal limitation applies if either of the foregoing conditions have been met:

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> "If the notice has been given or a payment has been made, **the action may be commenced at any time within 1 year after the most recent allowable expense**, work loss or survivor's loss has been incurred."

MCL 500.3145(1) (emphasis added). That is a true statute of limitations, literally defining the period within which suit must be filed, with the time running from the accrual of a claim for benefits pursuant to MCL 500.3110(4). See e.g., Chase v Sabin, 445 Mich 190, 194-95, 516 NW2d 60 (1994); Oole v Oosting, 82 Mich App 291, 297, 266 NW2d 795 (1978).

In addition to the foregoing provisions defining when an action must be filed, §3145(1) also contains a substantive limit on what may be recovered even if suit is timely filed:

> "However, the claimant **may not recover benefits for any portion of the loss incurred more than 1 year before the date on which the action was commenced**."

Id. (emphasis added). It is that damage limitation which is at issue here.

Analysis

The primary rule of statutory construction is to enforce the intent of the Legislature as expressed in the language of the statute. Peters v Gunnell, Inc, 253 Mich App 211, 216, 655 NW2d 582 (2002); Robertson v DaimlerChrysler Corp, 465 Mich 732, 748, 641 NW2d 567 (2002). If the language is unambiguous, it is to be enforced as written without judicial gloss being superimposed to thwart the legislative intent. E.g., Devillers, supra at 582.

In the instant case the unequivocal language of §3145(1) limits Plaintiff's **recovery of damages** to benefits for services

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rendered subsequent to April 22, 2003. That result is not affected by the insanity tolling provision invoked by Plaintiff:

> "(1) Except as otherwise provided in subsections (7) and (8), if the person first entitled to make an entry or bring an action under this act is . . . insane at the time the claim accrues, **the person** or those claiming under the person **shall have 1 year after the disability is removed** through death or otherwise, **to** make the entry or **bring the action although the period of limitations has run**. . . ."

MCL 600.5851(1) (emphasis added).

In terms, §5851(1) tolls the "period of limitations". Therefore, assuming that it operates so as to render Plaintiff's suit timely, it does not address the substantive limitation on damages, which is both syntactically and conceptually separate from the temporal period of limitations set forth in the sentence immediately preceding it in the statute.

The distinction between a statute of limitations and a limit on recovery of damages was aptly articulated by Justice Brickley in Howard v GMC, 427 Mich 358; 399 NW2d 10 (1986). In that case, the issue was whether the two-year back rule in the Workers' Disability Compensation Act, MCL 418.381(2) could be waived.

The analysis posited by Justice Brickley (joined by Justice Riley) turned on whether the two-year back rule could properly be characterized as a statute of limitations. He unequivocally decided that it was not, and explained why:

> "A statute of limitations 'represents a legislative determination of that reasonable period of time that a claimant will be given in which to file an action.' *Lothian v Detroit*, 414 Mich 160, 165; 324 NW2d 9 (1982)."

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* * * *

"Thus, relying on these very basic definitions of statutes of limitations, the one- and two-year back rule statutes may not be so categorized. **Simply stated, they are not statutes that limit the period of time in which claimant may file an action. Rather, they concern the time period for which compensation may be awarded once a determination of rights thereto has been made**."

* * * *

"**The [one- and two-year back] rules** do not perform the functions traditionally associated with statutes of limitations because they **do not operate to cut off a claim, but merely limit the remedy available. They do not disallow the action or the recovery** -- a petition may be filed long after an injury and benefits may be awarded in response thereto -- **they merely limit the award once it has been granted**.

"Therefore, on the basis of the language of the rules, we perceive no logical reason for characterizing the one- and two-year back rules as statutes of limitations."

Id. at 384, 385, 386-87 (emphasis added).[1]

More recently, this Court recognized that distinction in Devillers, supra:

"Thus, although a no-fault action to recover PIP benefits may be *filed* more than one year after the accident and more than one year after a particular loss has been incurred (provided that notice of injury has been given to the insurer or the insurer has previously paid PIP benefits for the injury), §3145(1)

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[1]The self-conscious efforts of Plaintiffs (Plaintiffs-Appellants' Supplemental Brief on Appeal, p 3-5) and MTLA (MTLA Brief, p 9-15) to distinguish Howard are misguided. ACIA does not cite Justice Brickley's opinion in Howard as controlling authority. Rather, it presents it to demonstrate that the distinction between damage limitations and statutes of limitations has a basis in both case law and logic. Its value for that purpose is unimpaired by the distinctions advanced by Plaintiffs. The additional flaws in MTLA's argument will be discussed infra.

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> nevertheless limits *recovery* in that action to those losses incurred within the one year preceding the filing of the action."

473 Mich at 574 (emphasis in original).

The validity of that distinction is further illustrated by this Court's recent decision in Waltz v Wyse, 469 Mich 642; 677 NW2d 813 (2004). In that case, an infant died in a hospital emergency room on April 18, 1994. In January 1999, the personal representative served a notice of intent to file a medical malpractice action. On April 18, 1999, the statute of limitations, as extended by the wrongful death savings provision, MCL 600.5852, expired. On June 23, 1999, the personal representative filed the complaint.

In response to the defendant's motion for summary disposition on the ground that the statute of limitations had expired, the plaintiff argued that MCL 600.5856(d)[2], the medical malpractice notice tolling provision, tolled the additional period

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[2] "The **statutes of limitations or repose** are tolled:"

* * * *

> "(d) if, during the applicable notice period under section 2912b, a claim would be barred by the **statute of limitations or repose** for not longer than a number of days equal to the number of days in the applicable notice period after the date notice is given in compliance with section 2912b."

MCL 600.5856(d) (emphasis added).

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permitted for filing wrongful death actions, MCL 600.5852.[3] Id. at 644. The defendant responded that §5856(d) did not do so, because §5852 is not a "statute of limitations or repose", but rather an additional savings provision. Id. at 646.

This Court held that the trial court properly granted the defendant's motion, and adopted the reasoning of the Court of Appeals opinion. The basis for the Court of Appeals' holding was the express language of §5856(d):

> "We need look no further than the language of the tolling statute to resolve this issue. MCL 600.5856(d) expressly tolls the 'statute of limitations.' The Supreme Court has said recently that MCL 600.5852 is not a statute of limitations, but rather a savings statute. *Miller [v Mercy Memorial Hosp,* 466 Mich 196; 644 NW2d 730 (2002).] Therefore, **by its express language, MCL 600.5856(d) tolls the statute of limitations, not the extended limit in MCL 600.5852**. Consequently, the trial court did not err because the statute of limitations barred plaintiff's claim."

469 Mich at 649, 650 (emphasis added).

Likewise, in terms, §5851(1) only references allowing suit to be filed "although the **period of limitations** has run". If the

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[3] "If a person dies before the period of limitations has run or within 30 days after the period of limitations has run, an action which survives by law may be commenced by the personal representative of the deceased person at any time within 2 years after letters of authority are issued although the period of limitations has run. But an action shall not be brought under this provision unless the personal representative commences it within 3 years after the period of limitations has run."

MCL 600.5852.

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(313) 963-8200

language in §5856(d) ("statute of limitations or repose") does not apply to a provision which extended the **time** for filing suit, a fortiori §5851(1), which references only "the period of limitations", cannot rationally be said to affect a **substantive limitation on recovery of damages** which applies even in a timely filed suit.

That construction of §§5851(1) and 3145(1) makes perfect sense. At the time that the No-Fault Act was passed, §5851(1) applied to "an action", and therefore tolled the period of limitations set forth in §3145(1). Cameron v ACIA, 263 Mich App 95, 100 n 1; 687 NW2d 354 (2004), lv gt'd, 472 Mich 899 (2005). In that context, it became necessary to impose a **substantive limit on recovery** in the interest of preserving the fiscal integrity of the no-fault system, regardless of any statutory or common law theories which might extend the time for filing the suit. Although technically unnecessary to the statutory analysis, that underscores the deliberate and rational decision made by the Legislature when it imposed the substantive limitation on recovery of damages distinct and separate from the period of temporal limitations.

A two-decades-old decision of the Court of Appeals is facially at odds with the above analysis. In Geiger v DAIIE, 114 Mich App 283; 318 NW2d 833 (1982), lv den, 417 Mich 865 (1983)[4],

[4]In its original Brief on Appeal to this Court, ACIA asked this Court to overrule Geiger's holding that the "'claimant'" is (continued...)

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the plaintiff was injured in an accident when he was 16 years old. Id. at 285. He filed an action for no-fault benefits more than three years later. Id. The trial court denied the defendant's motion for summary disposition. Id. at 286.

The Court of Appeals affirmed. The panel expressly recognized the distinction between the limitations period and the substantive damage limitation in §3145(1):

> "The no-fault act, §3145(1) does two things. First, it provides that an action to collect PIP benefits must be commenced within one year after the date of the accident. The period is tolled if a proper notice is given to the insurer within one year. Second, it provides that a claimant may not recover benefits for losses incurred more than one year before the date the action was commenced."

Id. at 290.

Nevertheless, the court applied §5851(1) to the damages limitation:

> "Although this is apparently a question of first impression, we believe that the minority saving provision of RJA §5851 should apply to the 'one year back' rule of §3145(1), as well as to the one-year period of limitations therein."

Id.

Geiger was followed in Manley v DAIIE, 127 Mich App 444, 455-56; 339 NW2d 205 (1983), aff'd in part, rev'd in part, remanded, 425 Mich 140; 388 NW2d 216 (1986), although this Court

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[4](...continued)
always the injured person. (Defendant-Appellee's Brief on Appeal, p 10-13). Here, ACIA addresses yet another erroneous holding in Geiger. Despite Geiger's manifest flaws, the Court of Appeals recently rejected an opportunity to overrule it. Hatcher v State Farm Mutual Automobile Ins Co, 270 Mich App ___; ___ NW2d ___ (2005). This Court should take the opportunity to do so.

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expressly declined to review the here relevant holding because the defendant did not challenge it in this Court, 425 Mich at 149 n 5. In three subsequent cases, the Court of Appeals followed Geiger in applying another savings provision, §5852 (quoted supra at n 3), to §3145(1)'s damage limit. Taulbee v Mosley, 127 Mich App 45, 338 NW2d 547 (1983), lv den, 418 Mich 975 (1984); Epps v Transit Casualty Co, 120 Mich App 279, 327 NW2d 321 (1982).[5]

Geiger is unworthy precedent and should be overruled for three reasons.

First, Geiger ignored the express language of the statutes involved. As demonstrated above, §3145(1) unambiguously limits recovery even in timely filed suits. Nothing in the language of §5851(1), which addresses only the timeliness of suit, even addresses that substantive damage limitation.

Second, as in Lewis v DAIIE, 426 Mich 93; 393 NW2d 167 (1986) -- the decision which this Court overruled in Devillers, supra -- the court in Geiger decided to simply ignore the plain legislative intent embodied in §3145's damage limitation, instead opting to impose its own sense of fairness in the guise of

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[5]In Professional Rehabilitation Associates v State Farm Mutual Automobile Ins Co, 228 Mich App 167; 577 NW2d 909 (1998), the Court of Appeals held that §5851(1) saved the plaintiff/subrogee's cause of action. However, the facts did not implicate the damage limitation -- the plaintiff sought benefits for services rendered prior to December 1991, but suit was not filed until May 1994. Id. at 168-69. Therefore, but for §5851(1), the suit would have been time-barred by the **statute of limitations** provision in §3145(1).

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furthering the purposes of §5851(1). 114 Mich App at 291. As this Court wrote in Devillers:

> "Statutory -- or contractual -- language must be enforced according to its plain meaning, and cannot be judicially revised or amended to harmonize with the prevailing policy whims of members of this Court."

473 Mich at 582. Hence, Geiger did not survive Devillers.

Third, Geiger did not survive this Court's decision in Waltz v Wyse, supra. As demonstrated above, if a statute which tolls a "statute of limitations" does not apply to a provision which extends the statute of limitations, a fortiori such a statute necessarily does not apply to a damage limitation which applies regardless of the timeliness of suit.

Some of Plaintiffs' arguments have been amply answered by the foregoing analysis. Others merit only short shrift.[6] One merits some discussion only because it carries some potential for confusion.

Specifically, Plaintiffs argue that:

(1) The one-year-back rule applies to losses 'incurred";

(2) To "incur" a loss is to be legally responsible for it;

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[6]Plaintiffs' argument that the statute is intended only for competent adults (Plaintiffs-Appellants' Supplemental Brief on Appeal, p 2-3) is nothing but an undemonstrated conclusion. Their contention that a proscription does not run against a party who could not bring a suit (id., p 11): (1) Is suspect because it invokes a common law doctrine to trump a statutory mandate, see Devillers, supra at 590 (limiting application of such rules as reserved for "unusual circumstances"), and (2) Is always subject to a controlling legislative mandate, e.g., MCL 600.5851(7)-(8) (requiring suit to be filed during minority of injured person).

(3) Because a minor cannot be held legally responsible for a debt, he cannot "incur" a loss;

(4) Therefore, the one-year-back rule does not apply to minors.

(Plaintiffs-Appellants' Supplemental Brief on Appeal, p 5-6).[7]

Plaintiffs' argument fails for two reasons.

First, someone always incurs the expense for medical treatment. In the case of a minor, the parents' common law obligation to support their children includes providing medical care. Manley v DAIIE, 127 Mich App 444, 453; 339 NW2d 205 (1983), aff'd in part; rev'd in part, 425 Mich 140, 153; 388 NW2d 216 (1986). That obligation will support a cause of action by a health care provider against the parent even where the parent has not agreed to pay for the treatment, e.g., St. Mary's Medial Center, Inc v Bromm, 661 NE2d 836 (Ind App 1996), transfer den, 683 NE2d 582 (1997); Greenspan v Slate, 127 NJ 426, 97 A2d 390 (1953); Children's Hospital of Akron v Johnson, 68 Ohio App 2d 17, 426 NE2d 515 (1980); Dean Medical Center S.C. v Connors, 238 Wisc 2d 636, 618 NW2d 194 (2000), or even where the parent has objected to the treatment, Schmidt v Mutual Hospital Services, Inc, 832 NE2d 977 (Ind App 2005).[8]

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[7]Plaintiffs make a similar argument concerning insane persons. (Plaintiffs-Appellants' Supplemental Brief on Appeal, p 7-8). A portion of the response to the argument concerning minors applies equally to insane persons. Consequently, ACIA will not discuss the categories separately.

[8]This line of cases underscores ACIA's argument that Geiger erroneously held that the "claimant" is always the injured person. (Defendant-Appellee's Brief on Appeal, p 10-13).

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Moreover, despite the general voidability of a minor's contractual obligations:

> "It is well-established, however, that a minor is liable for the value of necessaries furnished to him or her."
>
> * * * *
>
> "[A]pplication of the necessaries doctrine is often limited when the minor child is living with and supported by his parents. But where the parent refuses or is unable to furnish necessaries, the infant is liable for necessaries furnished him or her."

Garay v Overholtzer, 332 Md 339; 631 A2d 429, 443, 444 (1993). See also Schmidt, supra at 980.

Second, the practical reality mirrors the legal reality. Health care providers do not customarily provide services without knowing in advance who is going to pay for them. That person, by definition, has "incurred" the loss. Furthermore, in those circumstances where no one else is legally responsible to pay for auto-related treatment, the health care provider can sue the no-fault insurer directly as the "claimant". E.g., Lakeland Neurocare Centers v State Farm, 250 Mich App 35, 645 NW2d 59, lv den, 467 Mich 909 (2002); Professional Rehabilitation Associates v State Farm Mutual Automobile Ins Co, 228 Mich App 167, 577 NW2d 909 (1998).

In short, Plaintiffs' argument that minors cannot incur liability for medical expenses is both wrong and irrelevant.

Response to Amicus Curiae MTLA

In its recently filed brief, Amicus Curiae MTLA advances two arguments.

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The first (MTLA Brief, Issue I.) is a more sophisticated version of an argument advanced by Plaintiffs in their original brief (Plaintiffs/Appellants' Brief on Appeal, p 6, 11). That argument was answered by ACIA in its previous brief. (Defendant-Appellee's Brief on Appeal, p 24). Moreover, that argument is not relevant to the issue on which this Court requested additional briefing. Accordingly, ACIA will not discuss it further here.

MTLA's second argument is that the one-year-back rule is a "period of limitations" within the meaning of §5851(1) and is, therefore, governed by it. (MTLA Brief, Issue II.). Although it purports to be applying a "literal interpretation" of the statutes, MTLA cites no authority for the proposition that a substantive limitation on recovery is a "period of limitation" within the meaning of a statute which tolls a statute of limitations. MTLA also ignores the applicable tenets of statutory construction which conclusively refute its argument.

The first is that statutes that relate to the same subject are to be read together. E.g., Goldstone v Bloomfield Township Public Library, 268 Mich App 642, 655, 708 NW2d 740 (2005); Michigan Electric Cooperative Ass'n v , 267 Mich App 608, 617, 705 NW2d 709 (2005). The second is that words used in one place in a statute have the same meaning in every other place in the statute. Little Ceasar Enterprises, Inc v Department of Treasury, 226 Mich App 624, 630; 575 NW2d 562 (1997), lv den, 459 Mich 1000 (1999); Peiffer v GMC, 177 Mich App 674, 676, 443 NW2d

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178 (1989); Phipps v Campbell, Wyant & Cannon Foundry, 39 Mich App 199, 216, 197 NW2d 297 (1972), aff'd sub nom Valt v Woodall Industries, Inc, 391 Mich 678, 219 NW2d 411 (1974).

Chapter 58 of the RJA sets forth the periods of limitations for various causes of action, defines their accrual, and specifies when the periods of limitations are tolled or modified. Perusal of its various provisions compels the conclusion that "period of limitations" as used in §5851(1) denotes exclusively the time within which one must commence suit.

The very first section in Chapter 58 demonstrates that proposition:

> "No person may bring or maintain an action for the recovery or possession of any lands or make any entry upon any lands **unless, after the claim** or right to make the entry **first accrued to himself** or to someone through whom he claims, **he commences the action** or makes the entry **within the periods of time prescribed by this section**.
>
> "(1) **Defendant claiming title under fiduciary's deed or court-ordered sale.** When the defendant claims title to the land in question by or through some deed made upon the sale of the premises by an executor, administrator, guardian or testamentary trustee; or by a sheriff or other proper ministerial officer under the order, judgment, process, or decree of a court or legal tribunal of competent jurisdiction within this state, or by a sheriff upon a mortgage foreclosure sale **the period of limitations is 5 years**.
>
> "(2) **Defendant claiming title under tax deed.** When the defendant claims title under some deed made by an officer of this state or of the United States who is authorized to make deeds upon the sale of lands or taxes assessed and levied within this state **the period of limitation is 10 years**.
>
> "(3) **Defendant claiming title under will.** When the defendant claims title through a devise in any

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will, **the period of limitation is 15 years after the probate of the will in this state**.

"(4) **Other cases.** In all other cases under this section, **the period of limitation is 15 years**."

MCL 600.5801 (boldface headings in original) (underlined emphasis added).

The phrase "period of limitations" is used in that identical sense more than 25 times in the remainder of Chapter 58.[9] That demonstrates beyond even cavil that the phrase exclusively denotes the time within which suit must be commenced. Indeed, this Court has effectively recognized as much:

> "A person cannot commence an action for damages for injuries to a person or property unless the complaint is filed within the periods prescribed by MCL 600.5805. . . . The several subsections of MCL 600.5805 define **periods of limitations** for various types of actions to recover damages for injuries to person or property."

Ostroth, supra at 40-41 (emphasis added). Because the one-year-back rule does not prescribe the time within which a suit must be commenced, it is not a "period of limitations" within the meaning of §5851(1). That being so, the one-year-back rule is not affected by, much less governed by, §5851(1).

Although the foregoing should be conclusive, it also happens to be consistent with the generally understood meaning of the term "limitations" in this area of the law:

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[9]MCL 600.5805(2)-(12); MCL 600.5807(1)-(8); MCL 600.5809(2)-(4); MCL 600.5815; MCL 600.5821(1)-(3); MCL 600.5823; MCL 600.5825(1); MCL 600.5827.

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> "**Limitation. . . . 3.** a statutory period after which a lawsuit or prosecution cannot be brought in court. - also termed *limitations period; limitation period.* See STATUTE OF LIMITATIONS."

Black's Law Dictionary (7th ed 1999), p 939.

In Cole v Silverado Foods, Inc, 78 P3d 542 (Okla 2003), the issue was whether a statutory amendment which shortened the time for requesting a hearing and determination on workers' compensation benefits applied retroactively to a pending claim. That, in turn, presented the question whether the provision was a statute of limitations. The Oklahoma Supreme Court held in the negative in language particularly appropriate in the instant case:

> "*Not every statutorily-enacted time limit constitutes a statute of limitations.* Although at first blush §43(B) appears to bear some characteristics of limitations, it does not qualify for inclusion in that rubric. A salient distinction between limitations and other time-anchored restrictions is that the former operate exclusively on the time to *bring* an action."

Id. at 547 (emphasis in original). See also People v Pennyfeather, 11 Misc 2d 546; 174 NYS2d 766, 770 (1958).

In sum, MTLA's characterization of the one-year-back rule as a "period of limitations" is without basis in the language of the relevant Michigan statutes, and is contrary to the accepted meaning of that phrase in this area of the law. Section 5851(1) is, therefore, inapplicable to §3145(1) of the No-Fault Act.

CONCLUSION

The one-year-back rule of MCL 500.3145(1) is not a statute of limitations, but a substantive limit on recovery, akin to a damage cap. As such, it is not affected by any provision such as MCL 600.5851(1) which tolls the period for filing suit.

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